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In The
Supreme Court of the United States

October Term, 1992

LEONARD NOBELMAN AND HARRIET NOBELMAN,

Petitioners,

vs.

AMERICAN SAVINGS BANK,

Respondent.

On Writ of Certiorari
To The United States Court of Appeals
For the Fifth Circuit

AMICUS CURIAE BRIEF OF THE STATE OF ALASKA IN SUPPORT OF RESPONDENT AMERICAN SAVINGS BANK

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STATEMENT OF INTEREST OF AMICUS CURIAE STATE OF ALASKA

The State of Alaska's interest in the outcome of this case stems from its extensive investment in residential mortgages through various state agencies. These include the two principal state pension funds, the Public Employees' Retirement System and Teachers' Retirement System. The Permanent Fund Dividend Corporation, charged with the sound investment of a portion of Alaska's current oil revenues for the benefit of future generations, has also invested in residential mortgages, as has the Division of Investments within the State's General Fund.

But by far the largest portfolio of residential mortgages in Alaska is held by the Alaska Housing Finance Corporation (AHFC). AHFC is a public corporation

created by the Alaska Legislature in 1971 to remedy a serious shortage of decent residential housing in Alaska for persons of lower and moderate income. AS 18.56.010-.020. As of September 30, 1992, AHFC held 41,155 residential mortgages with a face value of over $3.2 billion, all on properties located within Alaska. Appendix, Exhibit "A."

Because of the cyclical nature of the Alaska economy, the values of the properties securing these loans may fluctuate widely, and some loans for a time may become undersecured during a downward fluctuation in property values. Such loans then become vulnerable to the type of stripdown rejected by the Court of Appeals for the Fifth Circuit in the present case, but upheld by the Court of Appeals for the Ninth Circuit in In re Hougland, 886 F.2d 1182 (9th Cir. 1989).

As a result of the Hougland decision, AHFC alone has lost nearly one million dollars from reductions of mortgage balances due to Chapter 13 stripdowns, and stands to lose more in the future if the practice is permitted to continue.

The State of Alaska therefore supports the position of respondent American Savings Bank in this case, and suggests affirmance of the Fifth Circuit's decision.

I. SUMMARY OF ARGUMENT

The State of Alaska is uniquely positioned to shed light on the issue before the Court, because Alaska has recently been through a period during which residential property values fell rapidly then recovered, and the low point of this cycle coincided with the approval of Chapter 13 stripdowns by the Ninth Circuit. The State of Alaska's experience

during this difficult time shows that Chapter 13 stripdowns primarily give a windfall to the debtor at the expense of the mortgagee and others, a result that Congress is unlikely to have intended.

The language of 11 U.S.C. Section 1322(b)(2) has been interpreted by various courts to permit stripdowns, but it can also readily be, and has been, interpreted to prohibit stripdowns. This ambiguity requires delving into the legislative history of the statute in order to determine Congressional intent. Historically, pre-Code practice did not permit mortgage stripdowns, although Chapter XIII debtors were permitted to cure defaults while maintaining payments. Witnesses before Congress testified against proposals to permit stripdowns. In response to this testimony, the statute took its current form. The only

explanatory comment on the final form of the statute indicates an intent to continue the pre-Code practice. There is no indication in the legislative history of any intent to depart from this practice to permit stripdowns on debtors' residences.

Interpreting the statute to permit stripdowns is also contrary to Congress's objectives in Chapter 13 and in the mortgagee clause of 11 U.S.C. Section 1322(b)(2). Permitting stripdowns eliminates any meaningful protection for mortgagees. At the same time, preventing modification of the mortgagee's other rights, although of no great benefit to the mortgagee, has the effect of reducing payments on unsecured claims and of actually making it more difficult for many debtors to keep their houses or propose a workable plan. Congress should not

readily be assumed to have intended such a result, when interpreting the statute to prohibit stripdowns does protect mortgagees, increases payments on unsecured claims, and does not significantly impact the debtor's fresh start or ability to propose a plan.

Finally, this Court's recent decision in Dewsnup v. Timm, -- U.S. --, 112 S.Ct. 773, 116 L.Ed.2d 903 (1992), that 11 U.S.C. Section 506(d) does not automatically operate to avoid the unsecured portion of a creditor's lien, also requires that 11 U.S.C. Section 1322(b)(2) be interpreted to prohibit residential mortgage stripdowns. Because the mortgagee's lien cannot be avoided under Section 506(d), some other lien avoidance power must be used, but no such power appears in Chapter 13. The power to "modify" the rights of creditors cannot be

read as including the power to avoid liens, and there is no evidence in the legislative history that Congress intended the section to contain a lien avoidance power. In the absence of a power to avoid the unsecured portion of the mortgagee's lien, the power to modify the mortgagee's rights in the unsecured portion of its claim is of little benefit to the debtor and is unlikely to have been intended by Congress.

II. ALASKA'S EXPERIENCE WITH CHAPTER 13 STRIPDOWNS.

A. Alaska's cyclical economy had a severe but transitory effect on property values and mortgage loans in the late 1980s.

As previously mentioned, Alaska's economy tends to be cyclical in nature. In the past 50 years there have been several periods of accelerated economic activity and expansion, followed by economic slowdowns and contractions of

greater or lesser severity: World War II, the discovery of oil in Cook Inlet in the 1950s, the discovery of oil on the North Slope in the 1960s, the construction of the Trans-Alaska Pipeline in the 1970s, and the oil boom of the early 1980s. Beginning in 1986, this last boom was followed by a severe economic downturn that reached bottom in approximately 1989. The population of the state declined. The Anchorage area, home to approximately half the State's people, lost almost 12% of its population. Appendix, Exhibit "B," page 2.

The downturn hit Anchorage particularly hard. One measure of this is property values. The values of single family homes tumbled an average 22.8% between 1986 and 1989, and condominium prices fell an average 65.9% over the same period. Exhibit "B," page 3. Because of

the concentration of population in the Anchorage area, the mortgage loan portfolios of AHFC and other state agencies were also concentrated in Anchorage properties.[1] The population exodus and decline in property values resulted in a soaring foreclosure rate. AHFC, for which figures are most readily available, had a loan portfolio of 51,969 loans, with balances totaling $4.3 billion, on June 30, 1986. Appendix, Exhibit "C," page 2. Over 60% of this was owed on properties in Anchorage, with over 75% owed on properties in Southcentral Alaska as a whole. Exhibit "C," page 3.

By December 1988, AHFC's loan portfolio had shrunk to 41,843 loans with

[1]With the exception of the Housing Assistance Division of the Alaska Department of Community and Regional Affairs, which specialized in rural loans. The Division was incorporated into AHFC in 1992.

total balances of $3.4 billion. Its inventory of foreclosed properties awaiting resale had reached 4,543 and over 13% of its loans were delinquent 30 days or more. Appendix, Exhibit "D," page 2. In 1986, AHFC took back 1,804 properties through foreclosure or repossession, 3,599 in 1987, 3,847 in 1988, and 3,035 in 1989. Appendix, Exhibit "E". Beginning in 1990, the economy began to improve, causing property values to recover. Single family home prices in Anchorage had returned to 92.2% of their 1986 peak by the end of 1991. Condominiums had regained over half the ground they had lost, recovering to 61.5% of their 1986 values. Exhibit "B," page 3.

B. Chapter 13 stripdowns became possible just as property values reached their low point, resulting in windfalls to some mortgagors.

However, some homeowners benefitted

more from this recovery than did others. In October 1989, as property values were at their lowest ebb, the Ninth Circuit's Hougland decision changed what had been the local interpretation of 11 U.S.C. Section 1322(b)(2)[2] and permitted Chapter 13 debtors to strip down their mortgage balances to the then-prevailing value of their residences. In the wave of Chapter 13 stripdown cases which followed the Hougland decision, the debtor-homeowners were able to reduce their mortgage balances to the depressed values of 1989 and early 1990, and reap the benefit of the appreciation which occurred later in 1990 and in 1991.

As a consequence, two homeowners who owned identical properties subject to

[2]Statutory references are to Title 11, United States Code, unless otherwise indicated.

identical mortgages in 1986 could be in very different situations by 1992, if one filed a Chapter 13 stripdown case in 1989 and the other did not. The homeowner who did not file bankruptcy would have seen a loss of value to 1989, then an increase in value back to near 1986 levels by 1992, with further appreciation likely in the future. In short, this homeowner would ultimately have been unaffected by the drop in property values: any "loss" was on paper only and would have been erased as property values recovered.

But the homeowner whose timing was good and filed a Chapter 13 stripdown case when property values were at their lowest ebb in 1989 would be much better off by 1992. That homeowner would be able to shift the paper loss to the mortgagee. For the mortgagee, the loss becomes an actual loss and not merely a paper one

because the stripdown means that the homeowner will no longer have to pay the mortgage in full. The later appreciation in value is irrelevant to the mortgagee. Even if the property value increases to a point where the property is again worth as much or more than the amount of the pre-stripdown mortgage balance, that appreciation will benefit only the debtor because the mortgage balance was limited to the earlier, lower, value of the property. Thus, through the magic of the Chapter 13 stripdown device, the homeowner is able to transmute a temporary loss in value into a permanent increase in the homeowner's equity in his or her residence. This increase in equity is made all the more pronounced by the more rapid amortization of the mortgage due to the reduction in its principal balance through the stripdown.

C. Chapter 13 stripdowns have had a significant impact, and may in the future have an even greater impact, on Alaska's mortgage loan portfolio.

The impact of Chapter 13 stripdowns on the state's loan portfolio has been significant. Again using figures for the AHFC portfolio, in just the 27 currently active Chapter 13 stripdown cases the loss has been over $900,000, not inclusive of the costs incurred in litigating the cases, for an average loss per case of $35,000. Appendix, Exhibit "F". The AHFC loan portfolio was particularly vulnerable to stripdowns, because AHFC had been the dominant residential mortgage lender in Alaska immediately before the downturn in property values. Borrowers on AHFC loans were, therefore, more likely to have purchased homes when values were at their peak and thus more likely to have little equity in those homes to cushion the

impact of the drop in property values. Appendix, Exhibit "G," page 2.

Because of this, it might be questioned why there are only 27 active stripdown cases affecting AHFC's portfolio of over 40,000 loans. Partly this is because many cases were attempted and failed due to the debtor's inability to either propose or adhere to a plan. The actual number of attempted stripdowns was much greater than 27. It would have been still greater had not AHFC and other mortgagees vigorously resisted stripdown cases. But the major reason for the relatively small number of stripdowns is the large number of foreclosures that occurred prior to October 1989, when the Ninth Circuit approved stripdowns in the Hougland case. The foreclosures which took place from 1986 to 1989 were generally against the properties which had

suffered the greatest decline in value relative to the mortgage balance, because default risk increases as the borrower's equity in the property becomes negative. Exhibit "G," page 2.

Had Hougland been decided in 1986, hundreds, possibly thousands, of Chapter 13 stripdown cases would likely have been filed in Alaska. Assuming a relatively conservative loss per case of $30,000, each 100 stripdown cases would have meant an additional $3,000,000 loss to the affected mortgagees. For AHFC, which finances its mortgage purchases through the sale of bonds, such a scenario would likely have resulted in a downgrading of its bond rating, forcing it to pay higher interest rates on future bond issues. This in turn would require AHFC to obtain higher interest rates on mortgages it purchased, thus undercutting AHFC's

mission to provide affordable housing. Additional difficulties would arise when the stripped down mortgage is paid off years early, forcing AHFC to find other sources of funds to maintain the payments to bondholders that previously had been funded by borrower mortgage payments. A similar problem would face state or other pension funds that had invested in mortgages that were later stripped down, because mortgage payments would not be available as expected to fund pension benefits. Consequently, one effect of Chapter 13 stripdowns is to benefit a small group of mortgagor-debtors today, at the expense of a larger group of potential homeowners, pensioners, and others, tomorrow.

D. Chapter 13 stripdowns result in a real loss to the mortgagee, even though it receives the value of the residence.

Because the Chapter 13 plan must provide a secured creditor with at least the value of its collateral, it might be argued that no real loss results to the mortgagee from the stripdown. Section 1325(a)(5)(B). There are several flaws in this argument. First, the argument assumes that the only alternative to the stripdown is a foreclosure by the mortgagee. While true in some cases, this would not be true in others. If the stripdown was not available, many mortgagors might choose to continue making mortgage payments and to not file bankruptcy at all, file a Chapter 7 bankruptcy and reaffirm on the mortgage debt, or file a Chapter 13 bankruptcy without modification of the mortgagee's rights, as was done before Hougland.

Second, even if the mortgagee does foreclose it may receive more than it

would have received under the Chapter 13 plan due to appreciation in the value of the property before it is ultimately sold. This right of the mortgagee to benefit from an increase in the value of its collateral was recognized in Dewsnup v. Timm, -- U.S. --, 112 S.Ct 773, 778, 116 L.Ed.2d 903 (1992). The mortgagee may also derive rental income from the property pending its disposition.

Third, in many cases the mortgagee would receive more than just the value of the residence if it foreclosed. Institutional lenders usually obtain mortgage insurance to protect themselves in the event of a decline in the value of their collateral. Such insurance may be legally mandated for any low downpayment loan. Under the Alaska Banking Code, no bank may make or acquire a mortgage loan with a loan-to-value ratio of over 90%

unless the loan is insured or guaranteed by a government agency or a private mortgage insurer. AS 06.05.207(a)(4) and (c). AHFC may not purchase a loan with a loan-to-value ratio over 80% unless the loan is the subject of private mortgage insurance, or a federal guaranty or federal insurance. 15 AAC 118.310(a)(3).[3] The Federal National Mortgage Association and Federal Home Loan Mortgage Corporation have similar restrictions under federal law. 12 U.S.C. Section 1717(b)(1) and (2); 12 U.S.C. Section 1454(a)(2).

Mortgage insurance is intended to satisfy all or a portion of the deficiency that results when the value of the mortgaged property is insufficient to satisfy the entire amount remaining on the mortgage at the time of foreclosure. In

[3]Recently recodified as 15 AAC 151.020(a)(3).

re Fischer, 126 B.R. 819, 823 at note 1 (D. Alaska 1992). In effect, the mortgage insurance substitutes for the large downpayment that would otherwise be required in order to give the mortgagee the protection of an equity "cushion" in the property. Fischer, at note 9. Approximately three-fourths of AHFC's loan portfolio has some kind of mortgage insurance coverage. Appendix, Exhibit "H," page 2.

Thus, in the event of foreclosure, AHFC or any other insured lender would receive more than merely the value of the property. However, the courts which have considered the issue have uniformly held that mortgage insurance is not to be taken into account in valuing the mortgagee's secured claim in Chapter 13 cases: The plan need only pay the mortgagee the value of the residence, without adjustment for-

the additional amount the mortgagee could recover through its mortgage insurance. Fischer, supra; Lomas Mortgage v. Wiese, 980 F.2d 1279 (9th Cir. 1992). At the same time, the insurance does not pay off in the absence of a foreclosure, which the bankruptcy prevents from taking place. A stripdown therefore represents a very real loss to an insured mortgagee even though the mortgagee will be paid the value of the residence itself over time.

The State of Alaska therefore regards the Chapter 13 stripdown device as merely giving a windfall to a few favored debtor-homeowners at the expense not only of the mortgagees whose rights are modified, but also of potential future homeowners who will be faced with higher interest rates or downpayment requirements as mortgage lenders take steps to protect themselves against possible stripdowns. Alaska's

cyclical economy and the coincidence that the Hougland case was decided just as the most recent cycle was reaching its low point put the State of Alaska in a unique position to demonstrate the effects of Chapter 13 stripdowns. The stripdown enables the debtor to lock in his or her mortgage balance at a temporarily depressed value, then reap the benefits as the economy improves, property values recover, and the mortgage pays off at an accelerated rate.[4] The mortgagee, on the other hand, is deprived of its right to benefit from any appreciation in value and is further deprived of the benefit of the mortgage insurance it obtained to protect it against any drop in value. The stripdown thus results in a real loss to

[4]For one measure of how much the debtors have benefitted, compare the "strip to" and "BOV" (Broker's Opinion of Value) columns of Exhibit F.

the residential mortgagee, despite its having been singled out by Congress for special protection. The State of Alaska therefore urges the Court to affirm the decision of the Fifth Circuit.

III. CONGRESS DID NOT INTEND TO PERMIT RESIDENTIAL MORTGAGE STRIPDOWNS IN CHAPTER 13.

A. The language of Section 1322(b)(2) may readily be interpreted to prohibit residential mortgage stripdowns.

Congress could, of course, have chosen to permit residential mortgage stripdowns in Chapter 13. The preceding discussion by the State of Alaska goes only to the wisdom of permitting stripdowns, and not to whether Congress might nonetheless have chosen to allow it. It has been said that Congress is not required to legislate wisely, only constitutionally. The constitutionality of depriving mortgagees of even the

unsecured portion of their mortgage lien was questioned by this court in Dewsnup, 112 S.Ct at 779. That aside, Congress should not readily be assumed to have legislated unwisely, and in a manner at odds with its obvious goals, as long as the legislation in question may be fairly interpreted in a way that avoids those objections.

Such is the case with Section 1322(b)(2). Many courts have held that the reference to "a claim secured by" the debtor's principal residence can only refer back to the preceding reference to "secured claims" in general, and therefore only the part of the claim secured by the residence--the "secured claim"--is immune from modification. E.g., Hougland, 886 F.2d at 1184. Other courts note that the definition of "claim" in Section 101(5)(A) refers to the entire claim, whether

secured or unsecured, that "claim" is used in the singular while "secured claims" is plural, and that what is modified are "the rights of holders of" claims, and not the claims themselves. Matter of Nobleman, 968 F.2d 483, 488 (5th Cir. 1992); In re Etchin, 128 B.R. 662, 668 (Bkrtcy. W.D. Wis. 1991). These courts hold that the statute prohibits residential mortgage stripdowns.

These contrasting positions of the courts, and not merely of the parties before the courts, demonstrate that at best the language of Section 1322(b)(2) is ambiguous. Dewsnup, 112 S.Ct at 777. This ambiguity requires examination of the legislative history of the statute.

B. The legislative history of Section 1322(b)(2) shows a clear intent to not depart from pre-Code practice that did not permit modification of a mortgagee's rights.

1. Under both former Chapter XIII and under the original proposed version of the Bankruptcy Code, the residential mortgagee's rights could not be modified.

Congress did not write on a clean slate when it enacted Chapter 13 as part of a new Bankruptcy Code in 1978. The former Bankruptcy Act had included a Chapter XIII since 1938, entitled Wage Earner's Plans. Report of the Commission on Bankruptcy Laws of the United States (Commission Report), Part I, page 157, reprinted in Collier on Bankruptcy, 15th ed., Appendix Volume 2. Under Chapter XIII, the plan could not "deal with," or modify, the rights of any creditor holding a claim secured by real property due to the exclusion of such claims from the Chapter XIII definition of claims. Commission Report, Part I, page 165. No

distinction appears to have been drawn between claims fully secured and those only partially secured.

Nonetheless, despite the formal inability of debtors to deal with real property secured claims in Chapter XIII, such claims were commonly dealt with on an informal basis. Courts sympathetic to the debtor facing the possible loss of his or her home would enjoin the creditor from foreclosing its mortgage while the case was pending, typically on the condition that payments be maintained and any default cured. Commission Report, Part I, page 165; Hallenbeck v. Penn Mutual Life Ins. Co., 323 F.2d 566 (4th Cir. 1963). Thus protected, the mortgagee would ultimately be paid in full.

With this procedural background, the Congressionally-authorized Commission on Bankruptcy Laws issued its report in 1973,

including a proposed new bankruptcy law ("Commission Bill"). The portion of this report and proposed law dealing with debtors with regular income became the foundation of the new Chapter 13.

This proposed provision, designated Chapter VI in the Commission Bill, incorporated several changes from the existing Chapter XIII that were designed to make it easier for debtors to deal with the claims of secured creditors. These changes and the rationale for them were discussed in the Commission Report:

> Accordingly, the Commission recommends that the new Act authorize inclusion in any plan proposed under Chapter VI, the successor to Chapter XIII of the present Act, provisions for the curing of defaults within a reasonable time and the maintenance of payments while the case is pending on claims secured by a lien on the debtor's residence and on claims secured by personal property on which the last payment is due after completion by the debtor

of all payments under the plan. With respect to short-term debts secured by personal property, the Commission recommends that the plan be permitted to include provisions dealing with such claims severally rather than generally as a member of a class of creditors. The proposal does not contemplate that the creditor so secured should be entitled to insist that the plan strictly preserve all of the terms of his original contract if the value of his claim against the property of the debtor is preserved. Commission Report, Part I, page 166 (emphasis supplied).

These recommendations were put into effect in the Commission Bill's version of Section 1322(b). This provision provided:

> Section 6-201. Provisions of Plan. A plan under this chapter may provide for a composition or an extension of indebtedness, or for a composition of some and an extension of other indebtedness and
>
> (1) shall include provisions dealing with unsecured claims generally, or by classes, on any terms, and may alter or modify the rights

> of the holders of such claims;
>
> (2) may include provisions dealing with claims secured by personal property severally, on any terms, and may provide for the curing of defaults within a reasonable time and otherwise alter or modify the rights of the holders of such claims;
>
> (3) may provide for payments on unsecured claims to be made concurrently with payments on claims secured by personal property;
>
> (4) may include provisions for the curing of defaults within a reasonable time and the maintenance of payments while the case is pending on claims secured by a lien on the debtor's residence and on unsecured claims or claims secured by personal property on which the last payment is due after

> completion by the debtor of all payments under the plan; . . . Commission Report, Part II, page 204 (emphasis in original).

Note that, like Chapter XIII, the Commission Bill did not generally allow a debtor to deal with claims secured by real property. The only exception was for claims secured by the debtor's residence. With respect to such claims and long-term debts secured by personal property, the debtor was granted the limited authority to cure defaults and maintain payments, a provision very similar to the practice that had developed under Chapter XIII. And, while the concept of bifurcation was explicitly recognized with respect to short-term debts secured by personal property, the Commission Report makes it clear that bifurcation was limited only to

such debts, and did not extend to long-term debts or those secured by the debtor's residence.

The Commission's Notes to Section 6-201 further underline this limitation by stating that "the secured claims referred to in this clause [clause (2)] and in clause (3) are only so much of the secured creditors' claims as do not exceed the value of their collateral." Commission Report, Part II, page 205, note 2. Conspicuously absent from this comment is a reference to clause (4) of Section 6-201, the provision specifically dealing with claims secured by the debtor's residence.

Thus, it is clear that under the Commission Bill the claim of a creditor secured by the debtor's residence was not to be bifurcated or modified in any way other than to allow the curing of

defaults. This is significant, because the Commission Report and Bill were highly influential in the formulation of the Bankruptcy Code, and the effect of this influence can be seen in the close parallels between Section 6-201 of the Commission Bill and Section 1322(b). Given the close parallels between the language of the two provisions, it is reasonable to suppose that there were also close parallels in the intended meaning of that language.

> 2. The process of adoption of the Bankruptcy Code shows an intent to continue the prohibition on modification of the mortgagee's rights contained in Chapter XIII and in the Commission Bill.

Despite the influence of the Commission Bill on the final version of Section 1322(b)(2), both the original

House and Senate versions would have permitted modification of at least undersecured claims secured by interests in real property, including the debtor's residence. The House version completely eliminated all protection by permitting the plan to "modify the rights of holders of secured claims or holders of unsecured claims." HR 8200, 95th Congress, 1st Session, Section 1322(b)(2). The Senate version limited the protection previously afforded under Chapter XIII to all real property secured claims to creditors with "claims secured wholly by mortgages on real property." S 2266, 95th Congress, 1st Session, Section 1322(b)(2) (emphasis added). The language of the Senate version is interesting, as it eliminates any question of bifurcation. As Section 506(a) defines secured claims, all such claims are necessarily "wholly" secured,

making the Senate's use of this term redundant unless the creditor's entire claim, in the Section 101(5)(A) sense, was meant.

However, neither of these versions became law, because residential mortgage lenders expressed concern about the impact of the proposed legislation on the availability of mortgage loans for individuals seeking to buy homes. In re Seidel, 752 F.2d 1382, 1385-6 (9th Cir. 1985); Grubbs v. Houston First American Savings Association, 730 F.2d 236, 245 (5th Cir. 1984). The State of Alaska is unaware of any testimony in favor of stripdowns, nor of any cases dealing with the stripdown issue that have cited such testimony.

While testimony before Congress might not ordinarily be considered legislative history, courts construing Section

1322(b)(2) have uniformly regarded this testimony as giving insight into what Congress intended in drafting the statute. See, e.g., Seidel, supra; Grubbs, supra; In re Glenn, 760 F.2d 1428, 1433-4 (6th Cir. 1985). Congress amended Chapter 13 by adding the mortgagee clause to Section 1322(b)(2). It is uniformly recognized by the courts that this amendment was in response to that testimony. Because that testimony opposed allowing stripdowns, the only logical conclusion is that the amendment to Section 1322(b)(2) was also intended to deal with the subject of cramdowns. Yet as interpreted by Hougland and the other courts permitting stripdowns, it does nothing of the kind.

Comparison of the proposed and final versions of Section 1322(b)(2) provides further proof that Congress was intending to prevent cramdowns as to residential

real property. The word "wholly" in the Senate version, which had the effect of restricting the non-modification protection to only fully secured claims, was dropped in favor of the word "only." The use of this word shows an intent to focus on the type rather than the amount of collateral, as a claim may be secured only by real property without being wholly secured by it. Further, the language of the final version shows an obvious kinship to the language of Commission Bill Section 6-201(4), which permitted only the cure of defaults on claims secured by the debtor's residence. The cure provision was carried into the Code in Section 1322(b)(5), and the purpose of the amendment and its relationship to the cure provision was explained in a joint comment by the floor managers of the Code:

> Section 1322(b)(2) of the House amendment represents a compromise agreement between similar provisions in the House bill and Senate amendment. Under the House amendment, the plan may modify the rights of holders of secured claims other than a claim secured by a security interest in real property that is the debtor's principal residence. It is intended that a claim secured by the debtor's principal residence may be treated under § 1322(b)(5) of the House amendment. 124 Cong. Rec. H11107 (daily ed. September 28, 1978) (statement of Rep. Edwards); 124 Cong. Rec. S17424 (daily ed. October 6, 1978) (statement of Sen. DeConcini) (emphasis added).

The floor comment makes it clear that, with respect to residential mortgages, Congress was adopting the approach of the Commission Bill and permitting only the curing of defaults and the maintenance of payments, and did not intend that the residential mortgagee's rights could be otherwise modified. The only plausible interpretation of the floor

comment is that the residential mortgagee's entire claim, rather than just its secured claim, was being taken out of Section 1322(b)(2) and placed within (b)(5). See Landmark Financial Services v. Hall, 918 F.2d 1150 (4th Cir. 1990) (cure under § 1322(b)(5) is distinct from cramdown under § 1322(b)(2), in that no modification of rights is permitted).

Thus, when the legislative history of the statute is studied in its entirety, it leads to the inescapable conclusion that Congress intended that the residential mortgagee's entire claim be protected. From the original Chapter XIII onwards, there is no indication that Congress ever considered a scheme for partial protection of a mortgagee's claim. Under both Chapter XIII and the Commission Bill, it was the mortgagee's entire claim that was protected. Under the original House

proposal no claim was to be protected, even if fully secured, and under the Senate proposal, only wholly secured claims were protected. There is no evidence of any proposal to Congress or debate by Congress of the hybrid approach of protecting only the secured claim but leaving the unsecured claim unprotected from modification. Because all of the evidence provided by the legislative history shows that Congress intended for the residential mortgagee to have protection for its entire claim and not merely its secured claim, and because there is no evidence of intent to provide only this partial protection, the State of Alaska feels that the result reached by the Fifth Circuit was correct and should be affirmed.

C. Permitting stripdowns under Section 1322(b)(2) actually eliminates the protection for

residential lenders that was intended by Congress.

> 1. In evaluating conflicting interpretations of the statute, it is necessary first to determine what purposes the statute was intended to serve.

The basic objectives of bankruptcy law are to achieve just and equitable distribution of assets to creditors and to relieve a debtor from the weight of oppressive indebtedness in order to give the debtor a "fresh start." In re Campbell, 124 B.R. 462, 464 (Bkrtcy. W.D. Pa. 1991); House Report ("HR") 95-595, p. 118, reprinted in Collier on Bankruptcy, 15th ed., App. Vol. 2. Within Chapter 13, the basic objective of distribution of the debtor's assets to creditors is modified by making sure that the creditors receive the value of those assets. Section 1325(a)(4) and (5). In addition to the

purpose of giving the debtor a fresh start, a specific goal of Chapter 13 is to enable the debtor to protect the debtor's assets, particularly the debtor's home. HR 95-595, p. 118.

However, Chapter 13 was not intended solely to benefit debtors. Chapter 13 was designed with an emphasis on debt repayment. In re Warren, 89 B.R. 87, 92 (9th Cir. BAP 1988) The legislative history notes that "the benefit to creditors [of Chapter 13] is self-evident: their losses will be significantly less than if their debtors opt for straight bankruptcy." HR 95-595, p. 118. Because secured creditors receive the benefit of their collateral in any case, the losses to which Congress was referring were those of unsecured creditors.

Finally, the specific purpose of the mortgagee clause of Section 1322(b)(2) was

to protect residential mortgage lenders and thereby assure that such lenders would continue to make loans on affordable terms. Glenn, 760 F.2d at 1433-4. Congress has on numerous occasions legislated in ways to encourage home ownership and to protect those who make home ownership possible. Congress has created secondary mortgage market agencies such as the Federal National Mortgage Association to purchase mortgages from primary lenders, spread the risk of those loans, and thereby reduce mortgage interest rates and downpayments to keep home ownership affordable. AHFC serves the same function in Alaska. The mortgage insurance program of the Department of Housing and Urban Development under 12 U.S.C. § 1709 and the guaranty program of the Department of Veterans' Affairs under 38 U.S.C. Section 1801 et seq. serve a

similar function. It is thus not surprising that Congress would include a specific provision in the Bankruptcy Code to protect residential mortgagees.

2. The pro-stripdown interpretation of the statute serves none of its purposes well, and is in conflict with many of them.

When the effect of interpreting the statute to permit stripdowns is measured against the various purposes of the statute identified above, it is clear that this interpretation conflicts with those purposes. In no case does it serve those purposes significantly better than the construction supported by the State of Alaska, and in most cases either serves those purposes significantly worse or actually runs counter to them.

The debtor's fresh start is not greatly aided by either construction. In

most cases, the debtor will still be making monthly mortgage payments long after the plan is completed, although they will go on longer if the mortgagee's rights are not modified. Nonetheless, the debtor's real fresh start comes from the discharge of other debts and not principally from the reduction of the mortgage balance. Bankruptcy law tends to look at the debtor's present financial condition and near-term rehabilitation. A benefit that the debtor will realize only several years in the future would not have weighed very heavily in the scales when Congress was drafting the Code.

The purpose of enabling the debtor to keep his or her residence is also not significantly better served by permitting stripdowns. The debtor must still cure any pre-preition default under Section 1322(b)(5), even if the amount of the

default is fully unsecured. Sapos v. Provident Institution of Savings, 967 F.2d 918, 927 (3rd Cir. 1992). Practically speaking, a mortgagee assured of full repayment because its rights cannot be modified is much more likely to work with the debtor to come up with a workable plan than is a mortgagee facing a loss because of the modification of its rights.

Moreover, if Congress's primary purpose was to enable the debtor to retain his or her home, including the mortgagee clause in § 1322(b)(2) was the wrong way to go about achieving this purpose. Because of the prohibition on modification of the mortgagee's rights, whether or not limited to its rights in its secured claim, the amount of the monthly mortgage payment cannot be reduced. Seidel, 752 F.2d at 1384-5. Typically, the monthly mortgage payment will be the largest

single expense in the debtor's budget. In many cases, the debtor's inability to modify the mortgagee's rights and lower the mortgage payment will prevent the debtor from proposing a feasible plan and assures that the debtor will in fact lose the house.

The pro-stripdown construction of the statute also conflicts with the purpose of reducing the losses of unsecured creditors. If the mortgagee's rights in the unsecured portion of its claim cannot be modified, so that the mortgagee must be paid in full, there will be no distributions to the mortgagee under the plan other than those necessary to cure any default under Section 1322(b)(5). All other plan payments can go to other unsecured creditors, thus maximizing their recovery. But if the mortgagee's rights can be modified, then the mortgagee's

unsecured claim must share in the distributions to unsecured creditors. As the mortgagee's unsecured claim may be a substantial portion of the total unsecured claims, this will greatly reduce the distributions to other unsecured creditors and thereby increase their losses over the situation where no modification of the mortgagee's rights is permitted.

Again, if a primary purpose of Congress in enacting Chapter 13 was to reduce the losses of unsecured creditors, including the mortgagee clause in § 1322(b)(2) was the wrong way to go about achieving this purpose as well. By preventing the monthly mortgage payment from being reduced, Congress reduced the amount of disposable income available to apply to the payment of unsecured claims, including the unsecured claim of the residential mortgagee. If it were not for

the mortgagee clause, the debtor would be able to reamortize the mortgagee's secured claim over the remaining life of the loan, thereby reducing the amount of the monthly mortgage payment. This would not only assist the debtor in the debtor's fresh start, but would free up additional disposable income to apply to the payment of unsecured claims, including that of the mortgagee. Thus, as interpreted by the cases finding in favor of stripdowns, Congress's use of the mortgagee clause is detrimental not only to the goal of increasing the payments to unsecured creditors, but to the goal of protecting the mortgagee as well.

This interpretation of the mortgagee clause conflicts with the purpose of protecting the mortgagee in other ways. By limiting the protection available to the residential mortgagee to the secured

portion of its claim, the practical effect of the this interpretation is to prevent only modification of the amount of the monthly mortgage payment and the interest rate on the loan. Neither of these protections is very useful, and in particular cases may actually be detrimental.

Prohibiting modification of the monthly payment amount is of limited benefit because the present value of the payment stream remains the same. On the other hand, prohibiting modification of the interest rate may put the mortgagee in a worse position than other secured creditors despite its "special protection." In general, the appropriate discount rate to use in determining the periodic payments to be made on a secured claim is the market rate of interest for comparable loans. In re Camino Real

Landscape Maintenance Contractors, 818 F.2d 1503, 1505 (9th Cir. 1987). Thus, the residential mortgagee will actually be treated worse than other secured creditors if the market rate of interest is higher than the contract rate of interest, because the mortgagee clause prohibits modification of the mortgagee's rights by increasing the rate of interest. This freezing of the rate of interest is a reasonable tradeoff when the mortgagee is being paid in full, but not when its rights in the unsecured portion of its claim are subject to modification.

Thus, it can hardly be said that interpreting the mortgagee clause to permit stripdowns offers the residential mortgagee any meaningful protection for its secured claim, let alone the "special protection" that was intended by Congress. A statute should not be interpreted so as

to render a part of it inoperative. In re Nobelman, 129 B.R. at 98 (N.D. Tex. 1991), and cases cited therein. Instead, it must be assumed that Congress worded Section 1322(b)(2) as it did to serve some purpose. In re Woodall, 123 B.R. 95, 98 (Bkrtcy. W.D. Okla. 1990). Interpreting the statute to permit stripdowns violates this precept by robbing the mortgagee clause of any purpose. When interpreted to permit stripdowns, the mortgagee clause provides only limited protection to the mortgagee and at the same time is detrimental to the other purposes of the statute. The payment to unsecured creditors is lessened, both because the unsecured portion of mortgagee's claim must share in distributions and because the mortgage payment may not be reduced. For the same reason, the debtor's ability to retain the residence is reduced and his

or her fresh start is impeded or at least not significantly assisted. In contrast, prohibiting modification of the mortgagee's rights in its entire claim not only does provide the intended special protection to the mortgagee but supports the other purposes of the statute as well. Payments to other unsecured creditors are increased, and the debtor's ability to retain the residence and achieve a fresh start are not significantly impacted, and may be improved.

In short, the only construction of the statute that is consistent both with its legislative history and with the recognized purposes of the statute is that supported by the State of Alaska. The State of Alaska therefore requests that this court affirm the decision of the Fifth Circuit.

IV. THIS COURT'S DEWSNUP DECISION IMPLICITLY REJECTS THE REASONING UPON WHICH HOUGLAND AND OTHER CASES PERMITTING STRIPDOWN ARE BASED.

A. Dewsnup held that Section 506(d) did not permit a stripdown in Chapter 7.

In Dewsnup v. Timm, 112 S.Ct. 773 (1992), the Court held that a Chapter 7 debtor could not make use of Section 506 to stripdown an undersecured creditor's lien to the value of the property securing the lien. Because Section 506 is relied upon in Hougland and other stripdown cases to permit an identical stripdown in Chapter 13, the reasoning of Dewsnup obviously has a bearing on whether those cases are correct.

In Dewsnup, the Court held that "Section 506(d) does not allow [the debtor] to 'strip down' [the creditor's] lien because [the creditor's] claim is secured by a lien and has been fully allowed pursuant to Section 502." 112

S.Ct. at 778. The Court reasoned that this would have been the result under pre-Code law, where a lien on real property passed through bankruptcy unaffected, apart from reorganization proceedings. 112 S.Ct. at 778-9 (citing former 11 U.S.C. § 616(1) and (10)). The Court further reasoned that Congress must have been aware of this practice when enacting the Bankruptcy Code in 1978. Because allowing lien stripdowns would have been a major change from pre-Code law, it should have been discussed in the Code's legislative history. In the absence of such a discussion, the Court ruled that to attribute to Congress an intention to make that change "is not plausible, in our view, and is contrary to basic bankruptcy principles." 112 S.Ct. at 779.

B. The reasoning of Dewsnup applies with equal force to stripdowns in Chapter 13.

The Court expressed no opinion as to whether the words "allowed secured claim" as used in Section 506(d) have the same meaning in other provisions of the Code. However, Section 506 is a provision of general application applicable to Chapter 13 as well as to Chapter 7 proceedings. Section 103(a); Hougland, 886 F.2d at 1183. Nothing in the Code suggests that Section 506(d) should have a different meaning in Chapter 13 than it does in Chapter 7, and normal rules of statutory construction require that it be given the same meaning. Sullivan v. Stroop, 496 U.S. 478, 110 S.Ct. 2499, 110 L.Ed.2d 438 (1990).

Further, just as with Chapter 7, there is no indication in the legislative history of Chapter 13 that Congress intended to effect a major change in pre-Code practice by permitting stripdowns on

the debtor's residence. As noted above, pre-Code practice did not permit the stripdown of liens on the debtor's residence in Chapter XIII. Allowing such stripdowns would be a major departure from pre-Code practice that should have been the subject of explicit discussion in the legislative history, according to Dewsnup.[5] In the absence of such discussion, the only conclusion that can be drawn is that no change from prior practice was intended by Congress. For this reason also, the Fifth Circuit should be affirmed.

C. No separate provision of Chapter 13 allows stripdowns.

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[5] The only explicit reference in the legislative history to the final version of Section 1322(b)(2) is the floor comment quoted in Part III.B. above, to the effect that claims secured by the debtor's residence were to be treated under the cure provisions of Section 1322(b)(5), which were adapted from the prior practice under Chapter XIII.

Because Section 506(d) must be interpreted the same way in Chapter 13 as in Chapter 7, the Dewsnup opinion means that Chapter 13 debtors may not rely on Section 506(d) in order to stripdown a mortgagee's lien to the value of the property securing the lien. In order for a stripdown to occur in Chapter 13, it must therefore be based on some other provision of the statute.

No explicit provision for the avoidance of liens appears in Chapter 13. The closest approach is the general power to modify "rights" contained in Section 1322(b)(2). However, this cannot be read as the equivalent of a power to modify liens. Where Congress intended for the debtor to have the power to modify or avoid liens, it provided that power explicitly, rather than leave it to implication. For example, Section 522(f)

gives the debtor the explicit power to avoid liens in certain exempt property.[6] Section 1123(a)(5)(E) provides that a Chapter 11 plan may provide for "the satisfaction or modification of any lien," a provision with no counterpart in Chapter 13.[7]

A Chapter 11 plan may also impair the rights of any class of claims. Section

[6] Section 522(f) is a provision of general application applicable in Chapter 13. It would entitle the debtor to avoid a judicial lien against the debtor's residence, as Section 1322(b)(2) protects only "security interests." The types of exempt property listed in Section 522(f) as subject to lien avoidance are consistent both with the approach of Commission Bill Section 6-201 (stripdowns only on short-term personal property secured claims) and the legislative history of the Code, which refers to stripdowns only of household goods and personal effects. HR 95-595, page 124.

[7] It was, however, taken directly from former 11 U.S.C. Section 616(10), which the Supreme Court in Dewsnup cited as an example of where stripdowns were permitted under the former Bankruptcy Act.

1123(b)(1). As defined in Section 1124, "impair" means essentially the same thing as "modify." Appeal of Capps, 836 F.2d 773, 776 (3rd Circuit 1987). If the power to impair or modify creditors' rights included the power to modify or avoid liens, the separate power to modify or satisfy liens contained in Section 1123(a)(5)(E) would be redundant. A statute should not be interpreted so as to render a portion of it superfluous. In re Oxborrow, 913 F.2d 751, 754 (9th Circuit 1990). Thus, a power to impair or modify a creditor's rights is something different from and does not include a power to avoid or modify a creditor's lien.

Because of this, Section 1322(b)(2) cannot be read as giving Chapter 13 debtors a power to avoid liens. That must be left to other provisions of the Code,

none of which are applicable here.[8] For this reason also, the Fifth Circuit should be affirmed.

V. CONCLUSION

While Alaska's recent experience with property value swings and stripdowns is unique, any state or region can be suddenly hit by severe local recessions that temporarily depress property values. Congress was aware of this in 1978 when it enacted the Bankruptcy Code. No logical reason exists for turning a temporary drop in value into a permanent windfall to the mortgagor-debtor and into a permanent loss

[8] This does not render Chapter 13 debtors powerless. Under Section 522(f), even oversecured liens may be avoided in a wide range of exempt property that covers practically everything the debtor owns other than house and car. A Chapter 13 bankruptcy is not a "reorganization" proceeding. In re Fischer, 136 B.R. 819 (D. Alaska 1992). Chapter 13 is only a vehicle for the adjustment of the debtor's debts, and a general power to avoid liens is not necessary to accomplish this goal.

to the mortgagee, and nothing in the legislative history of Section 1322(b)(2) suggests that Congress intended this result. Instead, the legislative history suggests that Congress intended to protect residential mortgagees by prohibiting stripdowns and continuing the pre-Code practice of permitting the debtor to cure defaults and maintain payments while the case was pending. This result is more consistent with the overall goals of Chapter 13 and of Congress's acknowledged objective in Section 1322(b)(2) of protecting mortgagees. Nor is there any evidence that Congress intended for there to be a general lien avoidance power in Section 1322(b)(2), and no other lien avoidance power could apply to the residential mortgagee's lien. For these reasons, the State of Alaska respectfully urges the Court to affirm the decision of

the Fifth Circuit in this case.

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APPENDIX

EXHIBIT A

ALASKA HOUSING FINANCE CORPORATION

STATISTICAL ABSTRACT

DATA BASE: AHFCMSTR-MINILIB POSTED TO 09/30/92

MORTGAGE LOANS BY SELLER SERVICER

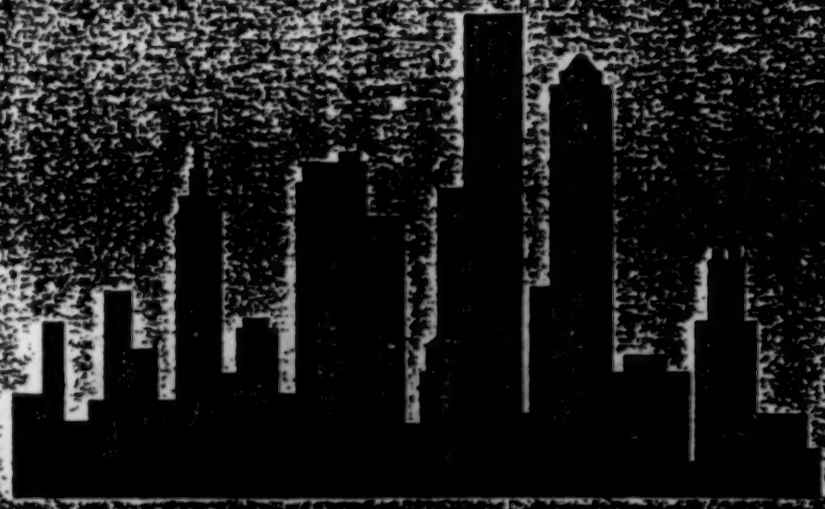
PERIOD ENDING:SEPTEMBER 30,1992

	NUMBER	AMOUNT
AHFC DIRECT SERVICING	40	$902,522.17
AHFC--REAL ESTATE HELD	673	11,270,780.58
ALASKA FEDERAL S & L *RHD	15	1,085,185.42
ALASKA FEDERAL SAVINGS & LOAN	904	71,678,925.12
ALASKA USA FEDERAL CR. UNION	8,341	625,389,448.16
ALASKA USA FEDERAL CU *RHD	128	14,275,231.02
BANK OF AMERICA	441	27,907,674.77
BANK OF AMERICA ALASKA	1,564	127,840,727.47
CENTRUST MORTGAGE CORPORATION	233	20,931,184.43
DENALI STATE BANK	218	17,907,756.41
FEDERAL DEPOSIT INSURANCE CO.	2	71,572.12
FIRST BANK	178	15,380,031.59
FIRST BANK *RHD	120	10,058,190.59
FIRST NATIONAL BANK OF ANCH	5,059	376,813,224.99
G.M.A.C. MORTGAGE CORP. OF PA	858	81,968,573.76
INTERIOR REGIONAL HSG. AUTH.	7	434,153.47
KEYCORP MORTGAGE, INC	3,305	246,646,412.22
KODIAK ISLAND HOUSING AUTH.	34	2,878,012.24
KODIAK ISLAND HOUSING AUTH*RHD	290	30,955,154.17
LOMAS & NETTLETON CO *RHD	6	417,547.89
MT MCKINLEY MUTIAL SAVINGS*RHD	1	14,540.84
MT. MCKINLEY MUTUAL SAVINGS	467	36,993,450.89
NANA REGIONAL HSG. AUTHORITY	19	1,339,418.29
NATIONAL BANK OF ALASKA	13,637	1,092,880,352.89
NATIONAL BANK OF ALASKA *RHD	805	80,271,179.94
NORTHRIM BANK *RHD	1	1,021,504.16
NORTHWEST INUPIAT HOUSING *RHD	1	55,586.05
PUGET SOUND	5	5,215,804.25
RURAL HOUSING DIVISION *RHD	1	100,000.00
SEATTLE MORTGAGE	319	28,133,393.80
SECURITY PACIFIC SAVINGS BANK	1	1,296,143.65
SOURCE ONE MTG SERVICES CORP.	2,827	216,982,857.16
TLINGIT-HAIDA REG. HOUS. AUTH	37	2,325,230.67
TLINGIT-HAIDA REGIONAL HSG*RHD	164	12,125,759.56
WESTERN MORTGAGE LOAN CORP.	118	11,380,651.87
1ST NATIONAL BANK OF ANCH *RHD	336	29,395,031.50
	41,155	$3,204,343,214.11

EXHIBIT B

Anchorage Indicators

1992 Update



Prepared by Susan R. Fison, Manager, Research & Technical Services
Community Planning & Development Department, Municipality of Anchorage
P.O. Box 196650, Anchorage, Alaska 99519 Phone: (907) 343-4254 FAX: (907) 343-4254

Revised October 7, 1992

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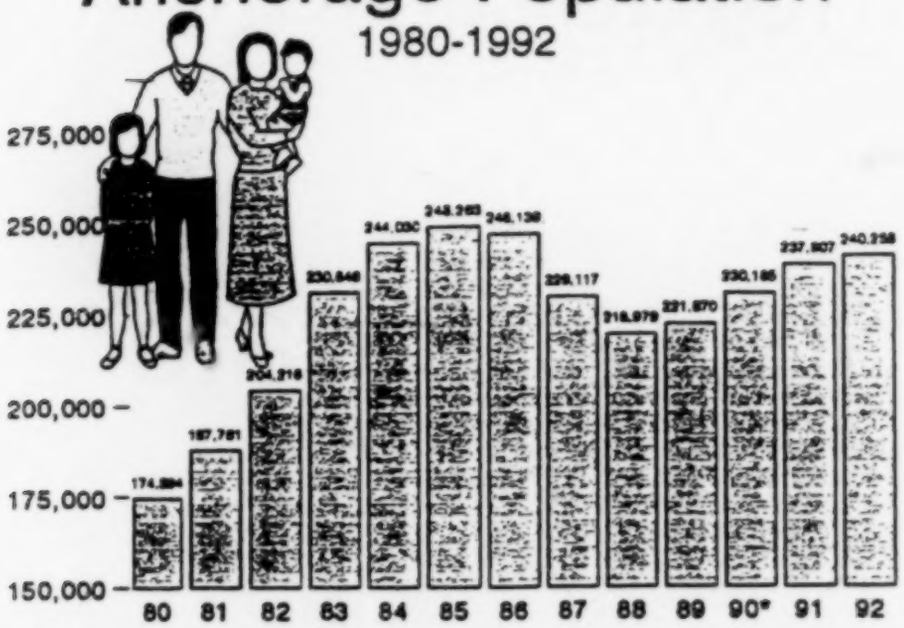
Anchorage Population

1980-1992



*Based on July 1 MOA survey; U.S. Census April 1, 1990 was 226,338.

Sources: 1980 based on U.S. Census; all others MOA Community Planning & Development estimates.

Year	Anchorage Population	Alaska Population	Anchorage % of State	Year	Anchorage Population	Alaska Population	Anchorage % of State
1929	2,736	59,278	4.6%	1978	177,817	384,100	46.3%
1939	4,229	72,524	5.8%	1976	179,837	409,800	43.9%
1950	30,060	128,643	23.4%	1977	182,920	418,000	43.8%
1960	82,833	226,167	36.6%	1978	180,248	411,800	43.8%
1961	89,299	236,669	37.7%	1979	174,584	413,700	42.2%
1962	90,149	242,817	37.1%	1980	174,431	401,851	43.4%
1963	93,885	249,904	37.6%	1981	187,781	433,800	43.3%
1964	94,519	253,204	37.3%	1982	204,216	466,200	43.8%
1965	102,337	266,192	38.6%	1983	230,848	497,800	46.4%
1966	105,925	271,505	39.0%	1984	244,030	522,000	46.7%
1967	107,817	277,906	38.8%	1985	248,263	539,600	46.0%
1968	113,522	284,880	39.8%	1986	246,136	547,600	44.9%
1969	114,180	294,560	38.8%	1987	229,117	537,800	42.6%
1970	126,385	302,361	41.8%	1988	218,979	531,000	41.2%
1971	135,777	319,600	42.5%	1989	221,870	534,400	41.5%
1972	144,218	329,600	43.7%	1990*	230,188	550,043	41.1%
1973	149,440	336,400	44.4%	1991	237,907	570,300	41.7%
1974	162,499	348,100	46.7%	1992	240,258	N/A	N/A

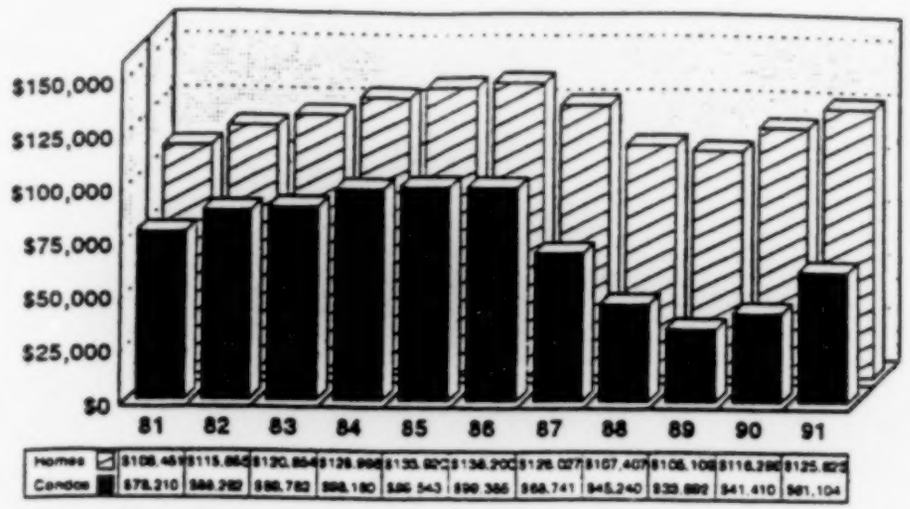
* This is based on a July 1, 1990 MOA survey. The April 1, 1990 Census counted 226,338 residents.
Source: Compiled by MOA Community Planning & Development Department from U.S. Census data, Alaska Department of Labor estimates and MOA estimates.

3 9095 00626415 9

Home & Condo Sales Prices

Anchorage

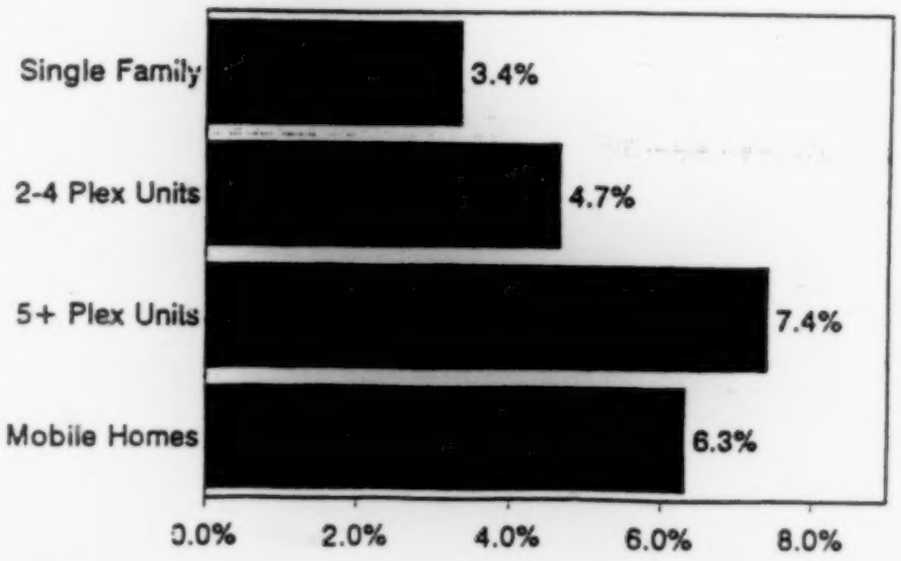
1981 to 1991



Source: Anchorage Multiple Listing Service.

Housing Vacancy Rates by Type

Anchorage (Except Turnagain Arm) 1992



Source: MOA Community Planning & Development Department survey.

EXHIBIT C

WHOLE EARTH CATALOG

July 1986

ALASKA HOUSING FINANCE CORPORATION

Selected Information

	Number	Amount
Loans owned at 6/30/86	51,969	$ 4,332,054,925
Outstanding loan commitments at 6/30/86	2,505	$ 292,069,227
Bonds outstanding at 7/31/86		$4,757,933,425

Delinquency Rates

	Mobile Homes	First Mortgage Loans	
	AHFC at 6/30/86	AHFC at 6/30/86	U.S. at 3/31/86 *
30 days	7.36%	4.70%	3.60%
60 days	3.26%	1.49%	0.96%
90 days or more and loans in foreclosure	4.89%	2.96%	1.88%
Total Delinquent and in Foreclosure	15.51%	9.15%	6.44%
Real Estate Owned	6.42%	1.33%	**

Budget Information

	Operating	Capital
Actual amounts Fiscal Year 1982	$2,276,200	$265,000,000
Actual amounts Fiscal Year 1983	3,441,000	150,000,000
Actual amounts Fiscal Year 1984	2,713,000(1)	49,051,000
Actual amounts Fiscal Year 1985	2,913,900(1)	
Approved budget Fiscal Year 1986	3,311,900(1)	

(1) Excludes trustee fees which are included in the capital budget.

* Delinquency statistics from the National Delinquency Survey published by the Mortgage Bankers Association.

** Statistics on real estate owned are not provided by the Mortgage Bankers Association.

ALASKA HOUSING FINANCE CORPORATION
MORTGAGES HELD BY CITY AND DISTRICT
JUNE 30, 1986

CITY	ACTIVE MORTGAGES	% OF MORTGAGES DISTRICT TOTALS	PRINCIPAL BALANCES	% OF DOLLARS
CRAIG	1,144	2.201	87,355,186.98	2.016
HOONAH	204	.393	10,802,551.12	.249
ELFIN COVE	664	1.278	51,222,933.14	1.182
JUNE BAY	3,513	6.760	286,810,245.63	6.621
CHITINA	712	1.370	48,323,048.83	1.115
PALMER	4,639	8.927	373,586,726.57	8.624
ANCHORAGE	30,215	58.142	2,617,765,664.87	60.428
ANCHOR POINT	2,743	5.278	206,705,600.60	4.772
KODIAK	720	1.385	53,895,541.08	1.244
SAND POINT	28	.054	2,085,014.60	.048
DILLINGHAM	50	.096	3,575,760.23	.083
ANIAK	175	.337	12,747,808.50	.294
GALENA	24	.046	2,189,800.28	.051
BETTLES AFB	229	.441	16,226,262.08	.375
ESTER	6,765	13.018	547,013,682.39	12.627
BARROW	81	.156	5,747,735.14	.133
NOME	62	.119	5,991,842.86	.138
		AREA TOTALS		
ANCHORAGE MUNICIPALITY	30,215	58.1415	$2,617,765,664.87	60.4279
MAT-SU VALLEY BOROUGH	4,602	8.8554	$371,176,993.09	8.5681
SOUTH CENTRAL ALASKA (EXCLUDING ANCHORAGE/MAT-SU)	4,489	8.6380	$331,932,307.60	7.6622
TOTAL SOUTH CENTRAL	39,306	75.62500	$3,320,874,965.56	76.65900
FAIRBANKS NORTH STAR BOROUGH	6,762	13.0118	$546,831,590.93	12.6229
NORTHERN ALASKA (EXCLUDING FAIRBANKS)	375	.7215	$28,147,931.74	.6497
TOTAL NORTHERN ALASKA	7,137	13.73400	$574,979,522.67	13.27300
JUNEAU BOROUGH	3,453	6.6444	$284,209,836.58	6.5606
SOUTHEAST ALASKA (EXCLUDING JUNEAU)	2,072	3.9870	$151,981,080.31	3.5082
TOTAL SOUTHEAST	5,525	10.63200	$436,190,916.89	10.06800
		TOTAL ALL LOANS		
TOTALS	51,968	100.000	$4,332,045,405.12	100.000

EXHIBIT D

Alaska Housing
FINANCE CORPORATION

STATISTICAL ABSTRACT

DECEMBER 1988

CSASUM

ALASKA HOUSING FINANCE CORPORATION

****

SELECTED INFORMATION FOR MONTH ENDING: 12/31/88

	NUMBER	%	DOLLAR	%
MORTGAGE LOANS	41,843	84.52	3,471,316,829	91.91
REAL ESTATE OWNED	4,543	9.18	271,805,544	7.20
INSURANCE RECEIVABLE	3,122	6.31	33,599,058	.89
TOTAL LOANS OWNED:	49,508	100.00	3,776,721,432	100.00

BONDS AND NOTES OUTSTANDING 3,851,109,339

DELINQUENCY STATISTICS, Mortgage Loans less Mobile Homes II: (2) (3)

Mortgage loans -				
30 days past due	1,740	4.44	152,568,233	4.50
60 days past due	679	1.73	61,279,400	1.81
90 days past due	445	1.14	38,955,748	1.15
120 days or more	2,288	5.84	210,786,055	6.22
TOTAL DELINQUENT LOANS:	5,152	13.15	463,589,437	13.67

OPERATING BUDGET:	1989 Fiscal Year	1988 Fiscal Year	1987 Fiscal Year
TOTAL BUDGET: (1)	5,924,100	5,801,200	3,741,900

(1) Budget excludes trustee fees and property maintenance, management and disposition costs associated with owned real estate and mobile homes. 1987 and 1988 are actual operating expenses; 1989 figures reflect the authorized budget.

(2) Delinquency rates include loans in foreclosure.

(3) Delinquency statistics are as percentage of Mortgage loans less Mobile Home II loans.

Note: Dollar figures calculated to penny accuracy, but printed in truncated dollars.

EXHIBIT E

YEAR		NUMBER OF FORECLOSURES/DIL*
1986		1,804
1987		3,599
1988		3,847
1989		3,035
1990		1,432
1991		519
1992		310
1993	(Through 2-4-93)	29
Total		14,575

Source is Alaska Housing Finance Corporation.

*DIL is for Deed in Lieu of Foreclosure.

EXHIBIT F

CONFIRMED AHFC CHAPTER 13 STRIPDOWNS

AHFC #	Original Note Date	Orig. Note Amount	Current Balance		Conf Date	Strip From	Strip To
6776	01/06/81	$75,000	$53,805		11/21/90	$67,745	$59,000
9527	05/31/83	$101,300	$23,735		06/21/90	$91,140	$47,633
29306	08/07/81	$57,000	$11,768	*	07/23/90	$51,978	$21,390
30506	09/01/81	$57,000	$29,062		10/31/91	$52,033	$32,000
39334	08/03/82	$76,950	$1,915		06/06/90	$71,971	$17,738
57767	01/12/84	$80,500	$30,469		02/15/91	$73,842	$43,500
66920	11/26/84	$96,750	$28,712		05/09/90	$92,749	$51,150
71760	07/29/85	$90,000	$25,746		04/11/90	$87,266	$46,000
71937	08/14/85	$99,000	$59,456		10/17/91	$92,371	$68,500
78122	07/08/86	$50,250	$0		01/23/90	$49,232	$9,500
105220	06/16/87	$110,000	$49,513		01/13/92	$105,208	$57,000
107702	04/07/88	$110,000	$45,403	*	03/09/90	$112,225	$60,351
107721	04/08/88	$105,000	$45,525	*	01/25/91	$110,201	$56,730
107907	04/21/88	$130,450	$83,507	*	09/13/90	$132,284	$98,000
108954	06/01/88	$75,000	$74,290		03/15/90	$75,933	$33,000
110782	09/19/88	$121,450	$93,556	*	03/19/90	$120,533	$102,000
112354	11/07/88	$74,200	$22,047		02/27/90	$73,787	$34,410
113451	11/04/88	$58,750	$12,742		05/22/90	$57,359	$24,680
114909	12/07/88	$102,100	$39,345		05/06/91	$100,794	$49,290
115195	09/14/88	$75,950	$18,956	*	07/11/90	$77,989	$32,550
115704	08/01/88	$109,250	$48,300	*	10/19/90	$116,044	$63,142
115708	09/01/88	$146,300	$97,464		06/90	$148,682	$112,000
117624	03/09/89	$104,000	$68,151		09/14/90	$102,388	$75,622
117036	01/31/89	$113,750	$108,899		12/18/91	$110,646	$80,000
118102	01/26/89	$118,450	$114,427		08/12/92	$114,736	$98,000
118525	11/29/88	$140,000	$111,487	*	06/11/90	$145,434	$120,900
121215	01/06/89	$90,700	$85,159		01/20/93	$85,159	$56,600
Totals		$2,569,100	$1,383,439			$2,519,729	$1,550,686

* AHFC notification date as actual confirmation date is unavailable due to time on at this time.

CONFIRMED AHFC CHAPTER 13 STRIPDOWNS

Strip From	Strip To	Strip Amount	Appraised @ Conf	Pre-HOAP Note Date	Note Amount	BOV** a/o 1/14/93
$67,745	$59,000	$8,745	$61,000			$89,500
$91,140	$47,633	$43,507	$52,000			$77,000
$51,978	$21,390	$30,588				$32,500
$52,033	$32,000	$20,033	$32,000			$37,000
$71,971	$17,738	$54,233	$18,321			$36,000
$73,842	$43,500	$30,342	$40,000			$67,500
$92,749	$51,150	$41,599	$55,000			$85,000
$87,266	$46,000	$41,266	$38,000			$68,000
$92,371	$68,500	$23,871	$68,500			$61,000
$49,232	$9,500	$39,732	$9,500			$19,500
$105,208	$57,000	$48,208	$57,000			$70,000
$112,225	$60,351	$51,874		06/15/84		$95,000
$110,201	$56,730	$53,471	$56,730	02/04/85		$80,000
$132,284	$98,000	$34,284	$98,000	12/13/83		$124,000
$75,933	$33,000	$42,933	$33,000	05/16/85		$49,000
$120,533	$102,000	$18,533	$102,000	01/21/83	$127,000	$105,000
$73,787	$34,410	$39,377		03/27/84	$75,000	$61,000
$57,359	$24,680	$32,679		01/19/83	$61,750	$33,000
$100,794	$49,290	$51,504	$50,000	11/29/82	$107,350	$73,000
$77,989	$32,550	$45,439	$35,000	08/10/83		$54,900
$116,044	$63,142	$52,902	$72,000	10/05/84		$93,350
$148,682	$112,000	$36,682	$112,000	08/05/86		$131,000
$102,388	$75,622	$26,766	$77,000	04/03/85	$100,000	$101,000
$110,646	$80,000	$30,646	$80,000	07/11/84	$115,600	$78,000
$114,736	$98,000	$16,736	$98,000	12/14/83	$119,200	$92,000
$145,434	$120,900	$24,534	$130,000	07/13/83		$145,000
$85,159	$56,600	$28,559	$51,000	11/08/83	$91,500	Added 2/4/93
$2,519,729	$1,550,686	$969,043				$1,958,250

EXHIBIT G

RECEIVED
APR 06 1987

ISER RESEARCH SUMMARY

Institute of Social and Economic Research, University of Alaska, Anchorage November 1986, R.S. No. 32

AHFC's Market Effects, 1980–1986

If you moved out of a rented apartment and bought a house in Alaska during the past six years, or if you bought a bigger or better house than you owned before, chances are good the Alaska Housing Finance Corporation (AHFC) subsidized your mortgage interest rate or offered you other special loan terms. AHFC financed 80 percent of new Alaska mortgages in the 1980s.

A recent study by the University of Alaska, Anchorage's Institute of Social and Economic Research (ISER) found that between 1980 and mid-1986 AHFC's programs allowed Alaskans to buy *more* and *better* houses: about 8,000 households that would otherwise have rented were able to buy; roughly 11,000 households that would otherwise have bought condominiums or mobile homes were able to buy single-family houses; and overall, the roughly 58,000 Alaska households that bought through AHFC spent about 15 to 20 percent more (buying bigger or better houses). Figure 1 illustrates some of the effects of AHFC on Alaska's housing quality.

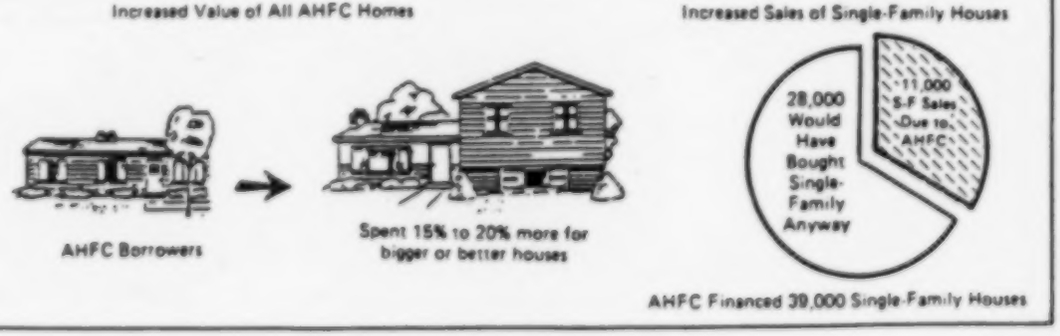
But did AHFC's subsidized interest rates and other policies designed to help more Alaskans buy homes also drive up prices? Are AHFC's loan policies in part responsible for the growing number of mortgage defaults, now that Alaska's economy is in a slump? And how much demand might there be for AHFC mortgages in the coming years?

The ISER study—done for AHFC—broadly examines how AHFC's residential mortgage loan programs have affected the Alaska housing market in the 1980s, and includes a model to project future mortgage demand.

Finding Highlights

- The biggest effects of AHFC's programs have been on the number and quality of houses sold rather than on prices, as noted above.
- Sales of just single-family houses were 40 percent higher in the first half of the 1980s, largely as a result of AHFC policies that allowed a substantial number of Alaskans who would otherwise have bought condominiums or mobile homes to buy single-family houses.
- AHFC's programs have had little *lasting* effect on prices: they increased prices by about 3 percent above what they would otherwise have been in the first half of the 1980s. AHFC's interest subsidies did contribute to the sharp price increase in the early 1980s, because those subsidies rapidly increased demand. But higher prices stimulated new construction that rapidly increased the supply of housing and held down subsequent price increases.
- The high conventional mortgage rates prevailing at the start of the 1980s might have reduced the share of Alaska households owning their own homes by as much as 12 percent if AHFC had not subsidized rates.

Figure 1. Selected Effects of AHFC on Alaska Housing Quality, 1980-1986

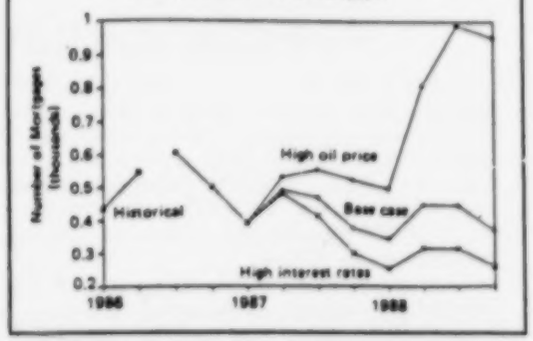

Increased Value of All AHFC Homes
AHFC Borrowers
Spent 15% to 20% more for bigger or better houses
Increased Sales of Single-Family Houses
28,000 Would Have Bought Single-Family Anyway
11,000 S-F Sales Due to AHFC
AHFC Financed 39,000 Single-Family Houses

- Homeowners tend to default on their mortgages when prices of their homes fall below what they still owe on the properties. The overall housing boom of the early 1980s and AHFC's programs sharply increased the number of Alaskans owning their own homes—so that many more households were at risk when the economic downturn brought down housing prices.
- Homeowners with little equity in their properties are more likely to default on their mortgages than are others with similar family and financial characteristics. AHFC has been harder hit by defaults than other lenders because many AHFC mortgage holders have little equity in their properties. AHFC made about 80 percent of new mortgage loans in the past few years—so thousands of AHFC borrowers have had little time to build up equity. Also, AHFC requires smaller down payments than do other lenders.
- AHFC borrowers with mortgages on condominiums and mobile homes have been more likely to default because prices of condominiums and mobile homes have fallen more—in percentages—than have prices of single-family houses. When housing prices are falling, single-family houses tend to hold their value better than do condominiums or mobile homes, because buyers generally prefer single-family houses and are better able to afford them when prices are down.
- AHFC programs, by continuing to offer the lowest available interest rates and other benefits, are still—even in the current economic slump—stimulating more demand for housing than would exist without the programs.

Projected Mortgage Demand

The computer model ISER developed for this study projects that in the absence of any big economic changes, demand for new AHFC mortgages will change little through the end of 1988—so while the housing market will remain slow, the slump in prices and sales is not likely to get much worse than it already is. However, defaults and foreclosures will probably continue to rise.* But projections of any sort are very risky in the uncertain economic climate in Alaska in 1986, and mortgage demand is very sensitive to changing economic conditions. Figure 2 illustrates the possible range of demand for new AHFC mortgages quarterly through 1988, under different economic assumptions.

Figure 2. Projected AHFC Loans Under Three Economic Scenarios
(New Conventional First Mortgages)



The middle line shows projected mortgage demand under the assumptions in the model's base case; the base case assumes that oil prices will stabilize slightly above their current levels and that per capita income and employment will decline slightly. The bottom line shows how mortgage demand could fall if interest rates rose to 14 percent; if that happened, mortgage demand could drop substantially below 1986 levels. The top line shows how mortgage demand could surge to twice the current levels if the price of oil increased substantially and alleviated the economic slump. There are many other factors that could affect mortgage demand; the ones in the figure are just intended to show the range of possible activity.

*We assume that AHFC will not auction off its large and growing inventory of foreclosed and repossessed homes. If auction-type sales (such as the one FNMA recently held in Anchorage to reduce its inventory of foreclosed homes) became more prevalent, prices would fall much more rapidly in the short-term and bottom out more quickly.

This summary is based on **Effects of Changes in the Alaska Housing Finance Corporation Mortgage Programs** *by Matthew Berman and Lee Huskey. The 130-page report is available for 10 cents a page from ISER at 3211 Providence Drive on the UAA campus; phone 786-7710.*

RESEARCH SUMMARY (No. 32)
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E. Lee Gorsuch, Director
University of Alaska, Anchorage
3211 Providence Drive
Anchorage, Alaska 99508

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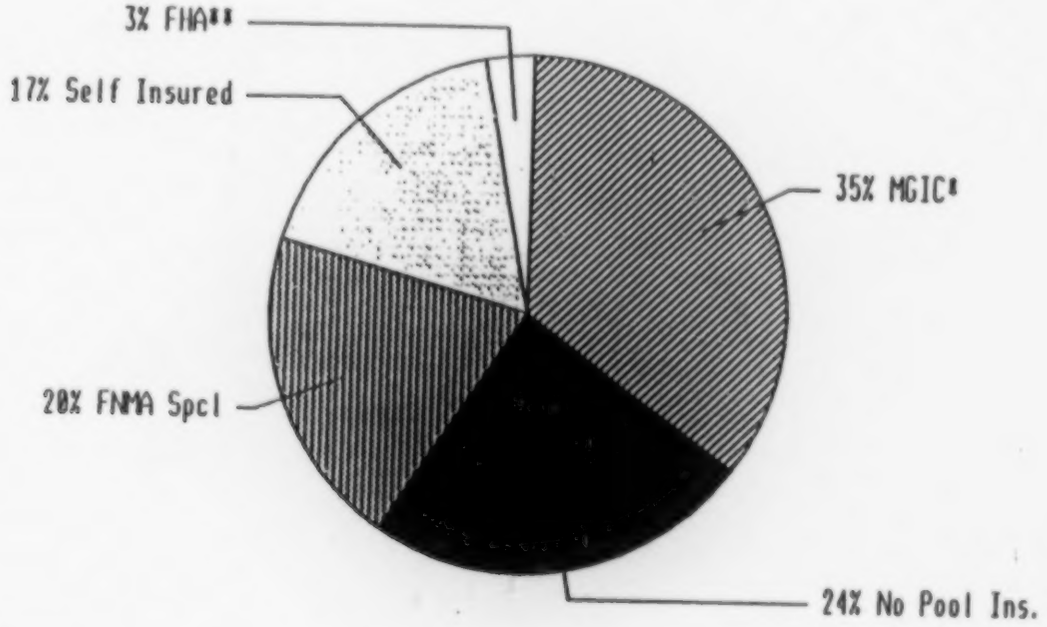
EXHIBIT H

Alaska Housing
FINANCE CORPORATION

STATISTICAL ABSTRACT

June 1988

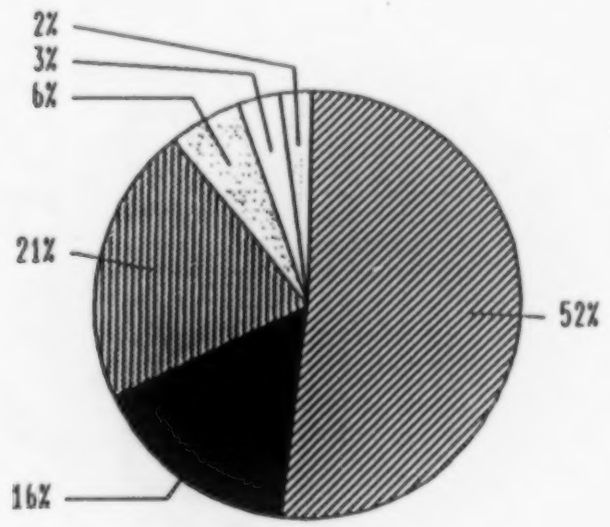
Pool Coverage of Loan Portfolio
June 1988



* Including FHA & VA

** Excluding MGIC

Primary Insurance Coverage of Loan Portfolio
June, 1988



Total Portfolio

PMI VA LTVR<=80% LTVR>80% FHA Unidentified